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ILLINOIS COMMERCE COMMISSION

**STATE OF ILLINOIS
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AQUA ILLINOIS, INC.

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2007 JAN 22 P 1:01

Petition for Approval of Certificate of Public

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CHIEF CLERK'S OFFICE

Convenience and Necessity to Operate a Water

)

Docket No. 06-0655

Supply and Distribution System; and for a Variance)

From Main Extension Deposit Rules to Expand)

System Development Charges.)

MOTION TO ACCEPT AND GRANT CONSOLIDATION

V3 Monee, LLC, by and through its attorneys Wildman, Harrold, Allen & Dixon, LLP, moves this Court to accept and grant consolidation of Illinois Commerce Commission Case Nos. 06-0669, and 06-0685 into the above captioned matter, 06-0655. In support of its Motion to Accept and Grant Consolidation, V3 Monee, LLC states as follows:

BACKGROUND

1. V3 Monee, LLC ("V3 Monee") is the owner and developer of the 216 acre Ironhorse Subdivision near the intersection of Crete-Monee and Old Monee Roads in the Village of Monee, Illinois ("Subdivision").

2. The Village of Monee ("Monee") is an Illinois non-home rule municipal corporation organized and operating under the laws of the State of Illinois.

3. Aqua Illinois, Inc. ("Aqua") is an Illinois corporation (formerly known as "Consumers Illinois Water Company") and is engaged in the business of furnishing water and treating wastewater for the public in the State of Illinois. Aqua is the Designated Management Agency for the Facilities Planning Area for wastewater treatment, which includes the Subdivision and Monee, as designated by the Northeastern Illinois Planning Commission ("NIPC").

4. Aqua has been previously given Certificates of Public Convenience and Necessity in Docket Nos. 84-0116, 88-0060, 94-0461, and 98-0340 to construct, operate and maintain a water distribution system and wastewater collection system ("Original Certificated Area").

5. On October 16, 1986, Aqua entered into a written agreement with Monee whereby it agreed to receive from Monee, on a wholesale basis, wastewater collected by Monee for treatment and disposal at its University Park wastewater treatment facility (the "Agreement").

6. The Subdivision is contiguous to Aqua's Original Certificated Areas, and is already within the Facilities Planning Area, which is the designated area to be serviced by Aqua's University Park Treatment Facility. Aqua is the only wastewater treatment facility in the area, therefore V3 Monee is dependant on Aqua for this essential utility service. Prior to the expiration of the Agreement on October 16, 2006, V3 Monee began preliminary work for development of the Subdivision for residential and commercial.

7. To complete development, the Subdivision must be connected to the Monee sewage system, which requires V3 Monee to obtain an Illinois Environmental Protection Agency ("IEPA") Construction Permit, which includes an application signed by a utility that has agreed to provide sewage service. V3 Monee submitted its IEPA Construction Permit Application to Aqua for signature prior to the expiration of the Agreement between Aqua and Monee. Although the Subdivision is within the Facilities Planning Area to be serviced by Aqua's University Park Treatment Facility, and V3 Monee submitted the application with a request that Aqua sign it, and Aqua has refused to do so.

8. As of October 16, 2006, the Agreement between Aqua and Monee expired, however Aqua has continued to provide wastewater treatment services to Monee by order of the IEPA.

9. There are currently pending three Illinois Commerce Commission proceedings relating to wastewater treatment and service by Aqua, to the territory within and nearby Monee, including the Subdivision.

10. In the present matter, and first case filed on October 6, 2006 with the Illinois Commerce Commission (“Commission”) for a Certificate of Public Convenience and Necessity as Docket 06-0655, Aqua seeks the Commission’s permission to expand its service territory to an additional 6,400 acres of land in Green Garden Township and Monee Township and to provide service to new customers outside its current certificated service area (herein “CPCN Petition”).

11. In the second case filed on October 12, 2006, with the Commission, docket number 06-0669, Monee complains that Aqua has improperly refused to provide sanitary sewer service to areas within the Village of Monee, specifically including the Subdivision, and is seeking an order to compel Aqua to provide such service (herein “Monee Complaint”).

12. In the third case filed on October 16, 2006 with the Commission, docket number 06-0685, Aqua seeks emergency relief that the Commission (a) authorize on a temporary basis, the continuation of rates permitted pursuant to the Agreement between Aqua and Monee; (b) award the recovery of costs to construct or otherwise obtain additional capacity necessitated by Monee’s failure to secure alternative wholesale wastewater treatment services; (c) prohibit Monee from requesting additional capacity; and (d) order Monee to obtain alternative service by a date certain (herein “Emergency Petition”).

13. This proceeding, as well as the other two, may materially affect V3 Monee’s development and sale of properties to its real estate customers. As a real estate developer in the State of Illinois, Village of Monee and the Facilities Planning Area as designated by NIPC to be

served by Aqua, V3 Monee has an interest in the provision of wastewater treatment services by Aqua to Monee.

14. V3 Monee has filed Petitions to Intervene and Motions to Consolidate in both the Emergency Petition action (06-0685), and the Monee Complaint action (06-0669). V3 Monee seeks to consolidate those matters into the present action, the CPCN Petition (06-0655). To that end, V3 Monee has filed a Petition to Intervene, and the present Motion to Accept and Grant Consolidation in this action.

ARGUMENT

Section 8-101 of the Public Utilities Act (220 ILCS 5/8-101) which provides:

§ 220 ILCS 5/8-101. Duties of public utilities; nondiscrimination.

A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all respects adequate, efficient, just, and reasonable.

All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

A public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay.

Nothing in this Section shall be construed to prevent a public utility from accepting payment electronically or by the use of a customer-preferred financially accredited credit or debit methodology.

Section 200.600 of the Rules of Practice of the Illinois Commerce Commission states that "the Commission or Hearing Examiner may order two or more proceedings involving a similar question of law or fact to be consolidated where rights of the parties or the public interest will not be prejudiced by such procedure." 85 Ill. Adm. Code 200.600. Because of the commonality of the parties, subject matter and issues in the three cases, consolidation will not prejudice any

substantial rights of the parties in this case, and will not unduly delay the adjudication of any matter. Indeed, the consolidation of these matters will avoid duplication of effort and expense, and avoid the possibility of inconsistent decisions. Furthermore, administrative bodies performing quasi-judicial functions have the discretion to consolidate cases for hearing. Black Hawk Motor Transit Co. v. Illinois Commerce Comm'n, 383 Ill. 57, 66-67, 48 N.E.2d 341, 346 (1943). Courts in Illinois favor consolidation of cases because such joinder promotes expedition in the trial of cases, conservation of time, and avoids duplication of effort and unnecessary expense. Peck v. Peck, 16 Ill. 2d 268, 276, 157 N.E.2d 249 (1959), Northwest Water Comm'n v. Carlo V. Santucci Inc., 162 Ill.App.3d 877, 889, 516 N.E.2d 287, 296 (1st Dist., 2nd Div., 1987).

All three cases are currently pending before the Commission and the Commission has the discretion to consolidate these matters. The issues raised in this matter, the Monee Complaint, and the Emergency Petition are closely inter-related in that they all deal with the question of how and to whom services should be provided across a wider area.


The overarching concern in all three matters is the quantity and allocation of Aqua's wastewater treatment capacity. In its Emergency Petition, Aqua claims that its University Park Treatment Facility has a limited capacity remaining and it cannot tolerate any additional capacity, as is being requested by Monee and V3 Monee. Yet, in its CPCN Petition, Aqua seeks to expand its service area, thereby taking on additional capacity at its University Park Treatment Facility. Presumably then, Aqua will only have the capacity to service a new area, if this Commission grants its Emergency Petition to terminate service to the Monee area. Furthermore, if this Commission grants Aqua's request to service additional areas without first addressing Aqua's obligation to provide wastewater treatment services to the Subdivision and Monee, V3

Monee would suffer significant financial harm. Therefore these matters should be consolidated into a single docket so that the broader issue of wastewater treatment service to this region can be addressed in a more comprehensive matter.

Consolidation of these matters would not prejudice any substantial right of any party or the public interest, but would instead benefit all parties because it would conserve and consolidate resources and time spent on the matters, and expedite the resolution of all pending issues.

WHEREFORE, V3 Monee, LLC, respectfully requests that this Illinois Commerce Commission enter an Order pursuant to 85 Ill. Adm. Code 200.600 consolidating Docket Nos. 06-0669 and 06-0685 into this Docket No 06-0655 currently pending before this Commission, and for any other relief deemed necessary and just.

Respectfully Submitted,

BY: 

One of the Attorneys for V3 Monee, LLC

Dated: January 19, 2007

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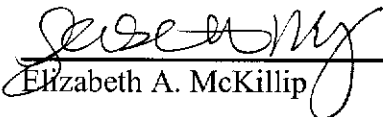
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NOTICE OF FILING

Please take notice that, on January 19, 2007, Elizabeth McKillip caused to be filed on behalf of V3 Monee, LLC the attached Motion to Accept and Grant Consolidation by regular mail to the Chief Clerk of the Illinois Commerce Commission, 527 East Capital Avenue, Springfield, Illinois 62701.

Dated: January 19, 2007

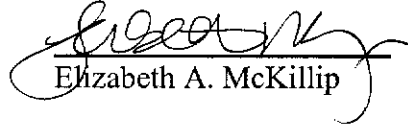

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CERTIFICATE OF SERVICE

Elizabeth A. McKillip, an attorney, hereby certifies that she served a copy of the attached Notice of Filing, Appearance and Petition to Intervene as an Active Party on the individuals shown on the attached Service List, via electronic mail delivery, on January 19, 2007.


Elizabeth A. McKillip

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Docket No. 06-0655

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